

Thomas F. West and Diana M. West  
5620 Scenic Pointe Ave.  
Las Vegas, Nevada 89130  
Telephone (702 ) 656-3081  
Plaintiffs in Proper Person

2011 APR 25 11:11:13

UNITED STATES DISTRICT COURT  
District of Nevada

THOMAS F. WEST and DIANA M. WEST

PLAINTIFFS

vs.

BANK OF AMERICA, N.A. and

BANK OF AMERICA HOME LOANS and

BAC HOME LOANS SERVICING LP and

MERS - Mortgage Electronic Registration

Systems, Inc. and

RECONTRUST COMPANY, N.A.

DEFENDANTS

Case No.: 2:10-cv-01966-JCM-GWF

MOTION FOR PRELIMINARY  
INJUNCTION and REQUEST FOR  
SANCTIONS

Thomas F. West and Diana M. West, Plaintiffs, in proper person, submit their Motion for Preliminary Injunction against Defendants, Bank of America, N.A., Bank of America Home Loans, BAC Home Loans Servicing, LP, MERS - Mortgage Electronic Registration Systems, Inc., and ReconTrust Company, N.A., pursuant to LR-65. This Motion is sought to prevent the improper taking of the subject property, the family home of Plaintiffs, by Defendants who have yet to prove their claims, which is the unresolved issue in the lawsuit initiated by Plaintiffs with this Court. Plaintiffs seek immediate relief through this injunction to prevent threatened wrong, further injury, and irreparable harm or injustice until such time as the rights of the parties can be ultimately settled. This Motion is also sought to preserve the rights of Plaintiffs in the lawsuit and to maintain the status quo of the same.

1 Points and Authorities

2 FACTS

3 Plaintiffs' filed a Complaint against Bank of America, N.A., Bank of America Home  
4 Loans, BAC Home Loans Servicing LP (BAC), and MERS - Mortgage Electronic Registration  
5 Systems (MERS), Defendants, on October 13, 2010 in District Court, which was removed to this  
6 Court on November 9, 2010. An Amended Complaint was filed on November 22, 2010 by  
7 Plaintiffs. At that time, all Defendants were properly named. On April 18, 2011, ReconTrust  
8 Company, N.A. (Recon), notified Plaintiffs of their claims and interest relating to the subject  
9 matter of this action (Exhibit A) and have been joined for just adjudication of Plaintiffs'  
10 Complaint.

11 Prior to filing of the Complaint, Plaintiffs made numerous attempts beginning in March,  
12 2010 and continuing for over 6 months to determine who holds the original mortgage documents  
13 and has a claim on Plaintiffs family home, the subject property of the Deed of Trust. Plaintiffs  
14 were not in default on the loan until such time as determined by audit and legal attempt to satisfy  
15 the loan with a pay-off determined that Defendants have no evidence of ownership of the  
16 mortgage loan in question. Plaintiffs' Amended Complaint states "this action seeks to prevent  
17 the collection of an improper debt" and "to prevent double paying this bank on the debt and/or  
18 pay the wrong party and/or prevent the possible wrongful taking of the family home by a bank  
19 no longer having a right to foreclose or collect on it."

20 Defendants and their legal counsels have been noticed of all pleadings and filings in this  
21 Case including Motions which remain pending. The Court has yet to resolve these matters and  
22 thus this case is not yet resolved. In fact this Case is now under a Discovery/Scheduling Order  
23 preparing for trial. To date, Defendants have produced no evidence as to their claim to have any  
24 interest in the indebtedness of Plaintiffs and any claim to the property under the rights conferred  
25 under the Subject Deed of Trust or otherwise. Defendants are unable to prove their claims of  
26 ownership of the mortgage in question as they have failed to hold and possess the original Deed  
27 of Trust Mortgage, original note, and other pertinent documents. Yet, Defendants through their  
28 recent actions assert claims that they have not and cannot prove.

## THE ACTION

This case has been before this Court for six months and Defendants are represented by Counsel, Ariel E. Stern and Christine M. Parvan, Akerman Senterfitt. Plaintiffs are Pro Se and representing themselves in proper person. Yet, Defendants with blatant disregard of the law and with malice of forethought filed of public record on April 19, 2011 an Assignment of Deed of Trust and a Substitution of Trustee naming ReconTrust Company, N.A. as Trustee under said Deed of Trust (Exhibit B). ReconTrust Company N.A. is a wholly owned subsidiary of Bank of America, N.A. and knew in advance that this lawsuit is still pending. ReconTrust Company N.A. also filed of public record a Notice of Default/Election to Sell Under Deed of Trust on April 19, 2011 (Exhibit C).

The exhibits, which are certified copies of the public recordings, show that all documents were signed on the same date and notarized by the same Notary Public in Tarrant County, State of Texas. It is important to note that the same signer appeared before this Notary, a taker of oaths, for BAC and Recon. Further, BAC has its place of business in California and Recon has its place of business in Dallas County, State of Texas with headquarters in California, yet the signer "personally appeared" in Tarrant County, Texas before the taker of oaths. MERS is headquartered in Virginia, yet the signer "personally appeared" in Tarrant County, Texas before the taker of oaths. These documents are extremely questionable and leads Plaintiffs to have serious doubts as to the validity of these documents.

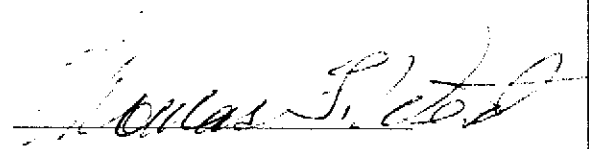
## CONCLUSION

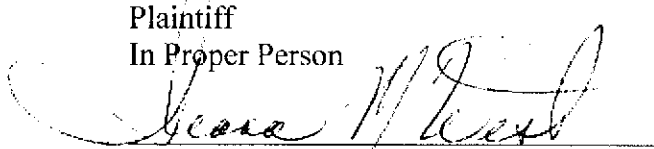
The Defendants claim to have ownership of the debt and/or the right to enforce the Secured Deed of Trust and has given Plaintiffs notice of their intent to do so by their filings of public record to sell the family home to satisfy obligations. The Notice of Default/Election to Sell Under Deed of Trust states that ReconTrust Company, N.A. has received "such deed of trust and all documents evidencing obligations secured thereby. " This lawsuit has been in this Court for six months and during this time Defendants have not produced any shred of evidence in support of their claim as holder in due course of the original mortgage documents and any claim to rights to the subject property, which is the family home of Plaintiffs.

1 Plaintiffs are not responsible for the delays in the resolution of this case in Court yet  
2 have been furthered harmed by this illegal and total disregard of the law and the fact that this  
3 lawsuit is still pending with a Lis Pendens filed of public record on October 13, 2010. The  
4 Court should take notice that arrogance of these Defendants are in total defiance of the laws and  
5 of the Constitution of this great country. These Defendants should be dealt by the Court in a  
6 manner such as to discourage this type of blatant disregard of the laws of this land.

7 Therefore, Plaintiffs ask this Court to immediately grant this Motion for Preliminary  
8 Injunction against Defendants and notify them to cease and desist all further actions until this  
9 Court case is adjudicated. It is Plaintiffs opinion that this illegal action by Defendants should  
10 warrant sanctions against them and their legal counsel and ask the Court for consideration of  
11 such sanctions or any other relief deemed necessary against Defendants and their legal counsel.

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14 Dated this 25th day of April, 2011.

  
Thomas F. West  
Plaintiff  
In Proper Person

  
Diana M. West  
Plaintiff  
In Proper Person

**Exhibit A**

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April 15, 2011

2011-0032653 /FNMA  
THOMAS F WEST  
5620 SCENIC POINTE AVE,  
LAS VEGAS, NV 89130

Re: Loan Number: 23406067  
Letter ID: 73266  
Property Address: 5620 SCENIC POINTE AVENUE, LAS VEGAS, NV, 89130

Dear THOMAS F WEST:

Your account has recently been referred to our office to begin the foreclosure process. However, there still may be some alternatives available to you. Due to the severity of this situation, time is now of the essence. If you are currently not working with your lender or loan Servicer on any type of work out arrangement, it is imperative that you make contact to discuss the options outlined below. You may do so by contacting the Home Retention Department at 1-888-200-5872 and referencing letter ID 73266.

#### **Alternatives to Foreclosure**

*Modification* involves changing one or more terms of your mortgage in order to bring your account current and prevent the loss of your home. Different types of modifications include extending the term of your mortgage or capitalization (adding delinquent interest and other fees and costs to the outstanding loan amount).

*Assumption* is a method of transferring your property to a new buyer who agrees to assume the responsibility for the ongoing payments of the existing mortgage.

*Preforeclosure Sale* is the sale of your property to a third party at market value. If the value is less than the total due, your Servicer may agree to accept the sale proceeds to satisfy some or the entire amount you owe.

*Deed in Lieu of Foreclosure* takes place when you voluntarily give the deed to the servicer to satisfy some or the entire amount you owe. This means you avoid a public foreclosure sale.

A Loss Mitigation Analyst can describe the available options and the requirements for each in greater detail.

In order for your Servicer to determine if you are eligible for any of the above options, they must review your financial situation. By providing this information, you will enable your Servicer to determine what alternative is best suited to you.

Sincerely,

ReconTrust Company

**Important Note: Contacting our office or the Servicer will not suspend your obligation to make your mortgage payments. We will continue all collection and foreclosure activity unless and until a workout plan has been completed.**

4/18/11 Rec'd → Review (male) 4:10 PM



April 15, 2011

2011-0032653 /FNMA  
DIANA M WEST  
5620 SCENIC POINTE AVE,  
LAS VEGAS, NV 89130

Re: Loan Number: 23406067  
Letter ID: 73266  
Property Address: 5620 SCENIC POINTE AVENUE, LAS VEGAS, NV, 89130

Dear DIANA M WEST:

Your account has recently been referred to our office to begin the foreclosure process. However, there still may be some alternatives available to you. Due to the severity of this situation, time is now of the essence. If you are currently not working with your lender or loan Servicer on any type of work out arrangement, it is imperative that you make contact to discuss the options outlined below. You may do so by contacting the Home Retention Department at 1-888-200-5872 and referencing letter ID 73266.

#### **Alternatives to Foreclosure**

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In order for your Servicer to determine if you are eligible for any of the above options, they must review your financial situation. By providing this information, you will enable your Servicer to determine what alternative is best suited to you.

Sincerely,

ReconTrust Company

**Important Note: Contacting our office or the Servicer will not suspend your obligation to make your mortgage payments. We will continue all collection and foreclosure activity unless and until a workout plan has been completed.**

**Exhibit B**

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Inst #: 201104190002936

Fees: \$14.00

N/C Fee: \$0.00

04/19/2011 01:16:03 PM

Receipt #: 745465

Requestor:

LSI TITLE AGENCY INC.

Recorded By: LEX Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:

RECONTRUST COMPANY, N.A.

AND WHEN RECORDED MAIL DOCUMENT TO:

BAC Home Loans Servicing, LP

400 National way SIMI VALLEY, CA 93065

TS No. 11-0032653

TITLE ORDER#: 110205146NVGTI

125-25-414-006

**CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA**

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:

**BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP**

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 04/04/2003, EXECUTED BY: THOMAS F WEST AND DIANA M. WEST, HUSBAND AND WIFE AS JOINT TENANTS, TRUSTOR: TO ORANGE COAST TITLE CO., TRUSTEE AND RECORDED AS INSTRUMENT NO. 00974 ON 04/10/2003, IN BOOK 20030410, OF OFFICIAL RECORDS IN THE COUNTY RECORDER'S OFFICE OF CLARK COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: April 18, 2011

MORTGAGE ELECTRONIC REGISTRATION SYTEMS, INC.

State of: TEXAS

County of: TARRANT

BY: Alicia Turner 4/18/2011

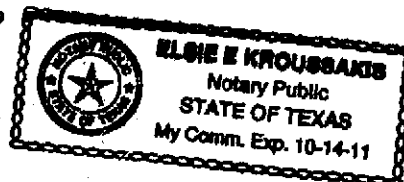
Alicia Turner, Assistant Secretary

Alicia Turner

APR 18 2011

On APR 18 2011 before me Elise E. Kroussakis, personally appeared Asst. Sec., know to me (or proved to me on the oath of Asst. Sec.) or through Asst. Sec. to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed. Witness my hand and official seal.

Elise E. Kroussakis  
Notary Public's Signature



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

APR. 21. 2011

*Debbie Conway*  
RECORDER

Inst #: 201104190002937

Fees: \$15.00

N/C Fee: \$0.00

04/19/2011 01:16:03 PM

Receipt #: 745465

Requestor:

LSI TITLE AGENCY INC.

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING REQUESTED BY:  
RECONTRUST COMPANY

AND WHEN RECORDED MAIL DOCUMENT TO:

RECONTRUST COMPANY  
2380 Performance Dr, TX2-984-0407  
Richardson, TX 75082

ATTN: Lashunda Scott-Kidd

TS No. 11-0032653  
Title order #110205146NVGTI  
125-25-414-006

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**SUBSTITUTION OF TRUSTEE NEVADA**

WHEREAS, THOMAS F WEST AND DIANA M. WEST, HUSBAND AND WIFE AS JOINT TENANTS was the original Trustor, ORANGE COAST TITLE CO. was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYTEMS, INC. was the original Beneficiary under that certain Deed of Trust dated 04/04/2003 recorded on 04/10/2003 as Instrument No. 00974 in Book 20030410 Page of Official Records of Clark County, Nevada;

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned desires to substitute a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner in said Deed of Trust provided,

NOW THEREFORE, the undersigned hereby substitutes RECONTRUST COMPANY, N.A., WHOSE ADDRESS IS: 2380 Performance Dr, TX2-984-0407, Richardson, TX 75082, as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

DATED: 04/18/2011

BAC HOME LOANS SERVICING, LP FKA  
COUNTRYWIDE HOME LOANS SERVICING LP  
BY BAC GP, LLC, ITS GENERAL PARTNER

BY: Laura Dalley 4-18-11  
Laura Dalley, Assistant Secretary

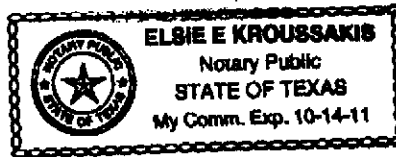
State of: TEXAS

County of: TARRANT

On 4/18/2011 before me Elsie E. Kroussakis, personally appeared  
Laura Dalley Asst. Sec. know to me (or proved to me on the  
oath of \_\_\_\_\_ or through J D D C) to be the person whose name is  
subscribed to the foregoing instrument and acknowledged to me that he/she executed the same  
for the purposes and consideration therein expressed.

Witness my hand and official seal.

Elsie E. Kroussakis  
Notary Public's Signature



CERTIFIED COPY. THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

APR 21. 2011

*Debbie Conway*  
RECORDED

**Exhibit C**



Inst #: 201104190002938

Fees: \$215.00

N/C Fee: \$0.00

04/19/2011 01:16:03 PM

Receipt #: 745465

Requestor:

LSI TITLE AGENCY INC.

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:**  
**WHEN RECORDED MAIL TO:**  
**RECONTRUST COMPANY**  
**2380 Performance Dr, TX2-984-0407**  
**Richardson, TX 75082**

NVNOD\_2011.3.0.2\_03/2011

TS No. 11-0032653

Title Order No. 110205146NVGTI

APN No. 125-25-414-006

Property Address:

5620 SCENIC POINTE AVENUE  
LAS VEGAS, NV 89130

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**NEVADA IMPORTANT NOTICE**

**NOTICE OF DEFAULT/ELECTION TO SELL UNDER DEED OF TRUST**

NOTICE IS HEREBY GIVEN THAT: RECONTRUST COMPANY, N.A., Trustee for the Beneficiary under a Deed of Trust dated 04/04/2003, executed by THOMAS F WEST AND DIANA M. WEST, HUSBAND AND WIFE AS JOINT TENANTS as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYTEMS, INC. as beneficiary recorded 04/10/2003, as Instrument No. 00974 (or Book 20030410, Page ) of Official Records in the Office of the County Recorder of Clark County, Nevada. Said obligation including ONE NOTE FOR THE ORIGINAL sum of \$123,900.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :  
FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON 10/01/2010 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST, TOGETHER WITH ALL LATE CHARGES; PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEYS' FEES. IN ADDITION, THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 05/01/2033 AS A RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE.

That by reason thereof, the present beneficiary under such deed of trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

**NOTICE**

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed Of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may there after be sold. The Trustor may have the right to bring court action to assert the non existence of a default or any other defense of Trustor to acceleration and sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact: BAC Home Loans Servicing, LP, c/o RECONTRUST COMPANY, N.A. 2380 Performance Dr, TX2-984-0407, Richardson, TX 75082, PHONE: (800) 281-8219. Should you wish to discuss possible options for loan modification, you may contact the Home Retention Division at 1-800-669-6650. If you meet the requirements of Section NRS 107.085, you may request mediation in accordance with the enclosed Election/Waiver of Mediation Form and instructions. You may also contact the Nevada Fair Housing Center at 1-702-731-6095 or the Legal Aid Center at 1-702-386-1070 for assistance.

DATED: April 18, 2011

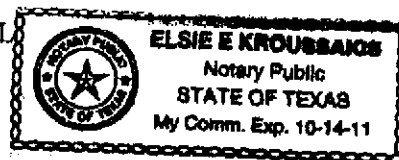
RECONTRUST COMPANY, N.A.

BY: Laura Dalley 4-18-11  
Laura Dalley, Authorized SignerState of: TEXAS )County of: TARRANT )

On APR 18 2011, before me Elsie E. Kroussanos, personally  
appeared Laura Dalley, Authorized Signer known to me (or  
proved to me on the oath of \_\_\_\_\_ or through JED DL) to be  
the person whose name is subscribed to the foregoing instrument and acknowledged to  
me that he/she executed the same for the purposes and consideration therein expressed.

WITNESS MY HAND AND OFFICIAL SEAL

Elsie E. Kroussanos  
Notary Public's Signature



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

APR. 21. 2011

*Debbie Conway*  
RECORDER

CERTIFICATE OF MAILING

I, Diana M. West, hereby certifies that a copy of the Motion for Preliminary Injunction and Request for Sanctions filed on the 25th day of April, 2011, in the above-entitled case was mailed by me on April 25, 2011 by depositing copies thereof in a sealed envelope, first-class postage prepaid, in the United States mail, to

Ariel E. Stern, Esq.  
Akerman Senterfitt LLP  
400 South Fourth Street, Suite 450  
Las Vegas, NV 89101

Christine M. Parvan, Esq.  
Akerman Senterfitt LLP  
400 South Fourth Street, Suite 450  
Las Vegas, NV 89101

Bank of America, N.A.  
Brian Maynihan, President, CEO  
100 N. Tyron St.  
Charlotte, NC 28263

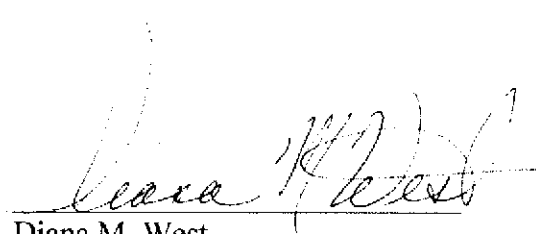
Bank of America Home Loans  
Barbara J. Desoer, President  
1757 Tapo Canyon Road  
Simi Valley, CA 93063

BAC Home Loans Servicing, LP  
400 National Way  
Simi Valley, CA 93065-6285

MERS - Mortgage Electronic Registration Systems  
RK Arnold, President CEO  
1818 Library Street, Suite 300  
Reston, VA 20190

ReconTrust Company, N.A.  
Laura Dalley, Authorized Signer  
2380 Performance Dr.  
TX2-984-0407  
Richardson, TX 75082

Dated: April 25, 2011

  
Diana M. West  
Plaintiff  
In Proper Person